

# OFFICE OF THE ATTORNEY GENERAL



94-00013

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OCT 20 1993

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Municipalities - City  
Councils - Term of Office -  
Municipal Elections

Redistricting for school board  
and city council districts  
pursuant to Act No. 93-634  
and federal court order dis-  
cussed.

Dear Mr. Joffrion:

This opinion is issued in response to your request for  
an opinion from the Attorney General.

## QUESTION 1

Act No. 93-634 notwithstanding, does  
the Order of the United States District  
Court for the Northern District of Alabama,  
Northeastern Division, entered on June 2,  
1988, in that certain case styled Grayson  
v. Madison County, Alabama, et al., Civil  
Action No. 84-V-5570-NE, preclude the City  
of Huntsville, Alabama, from increasing  
the number of single-member districts from  
five (5) to a number not greater than nine  
(9) in accordance with Act No. 93-634,  
absent a modification of the Federal Court  
Order?

FACTS, ANALYSIS AND CONCLUSION

We do not here undertake a review of the order in Grayson v. Madison County, Alabama, et al., Civil Action No. 84-V-5770-NE, but note that the court order did not provide for alteration of the number of city council districts for the City of Huntsville, but left the question open until action was taken to amend the redistricting plans. It is, therefore, the opinion of this office that any proposal for increasing the number of council districts pursuant to Act of Alabama 93-634 must be submitted to the court for its approval before such an increase is implemented.

QUESTION 2

If the City of Huntsville, Alabama, increases the number of single-member districts from five (5) to a number not greater than nine (9), is the Board of Education authorized or required to increase the number of its single-member districts to the same number as adopted by the City Council of the City of Huntsville, Alabama?

FACTS, ANALYSIS AND CONCLUSION

Your request presents the following information:

Two (2) local acts have been adopted since 1988, both either directly or indirectly addressing the issue of redistricting in Huntsville, Alabama. Act No. 88-811, enacted at the 1988 Regular Session of the Legislature of Alabama, provides that the Board of Education and the City Council may also jointly agree to have five or more such districts. Act No. 90-283, enacted at the 1990 Regular Session of the Legislature of Alabama, provides that the Board of Education shall be elected from districts for the City Council. These are purely local acts, applicable only to Huntsville, Alabama. Both the city attorney and the city's bond counsel have

advised the Council that both Act No. 88-811 and Act No. 90-283 are unconstitutional local laws which violate the provisions of Sections 104 and 105 of the Constitution of Alabama 1901, and should not be followed in the redistricting of the City Council.

We also note that the make-up of the Board of Education is a part of the court's order in Grayson and subject to the same standard of scrutiny as the redistricting plans for council districts.

Although we note with concern the question of the constitutionality of the local acts providing for the same number of council districts and school board districts, we again defer to the United States District Court as this issue, as well as the council districts issue, must be presented to that court. Questions involving other issues of constitutionality can only ultimately be decided in a court of competent jurisdiction.

#### QUESTIONS 3-6

Are all terms of office for City Council members to be concurrent with the Mayor of the City of Huntsville, Alabama, pursuant to the provisions of Act No. 93-634?

Do the terms of office for Council Districts 2, 3 and 4, beginning in October 1994, conclude with the ending of the Mayor's term in September 1996?

Can the term of an incumbent member of the City Council be shortened by a redistricting when the incumbent member was elected under a plan which was in compliance with the Voting Rights Act and State law?

Act No. 93-634 authorized the adoption of an Ordinance to increase the number of single-member districts ninety (90) days prior to the regular general municipal election. Is the regular

general municipal election in 1994 or  
1996?

FACTS, ANALYSIS AND CONCLUSION

Your request presents the following information:

Pursuant to Act No. 738, as modified by the Federal Court Order, the City of Huntsville elects its five (5) council members from single-member districts using staggered terms, with council members from Districts 1 and 5 serving four (4) year terms concurrent with the Mayor (which terms shall expire in September 1996), and council members from Districts 2, 3 and 4 serving four (4) year terms (which shall expire in September 1994) which are not concurrent with the mayor.

\* \* \*

Act No. 93-634, enacted at the 1993 Regular Session of the Legislature of Alabama, provided that the governing body of a Class 3 municipality may adopt an ordinance 90 days prior to the regular, general municipal election increasing the number of single-member districts up to nine. Act No. 93-634 also provides that all terms of office for city council members shall be concurrent with the mayor of the municipality. (See attachment 4.) The City is a Class 3 municipality as defined in Section 11-40-12 of the Code of Alabama 1975.

These questions have been discussed at length in an opinion to Honorable DeWayne Freeman under date of 8-19-93 (A.G. No. 93-00300), but we will here summarize for you our conclusions.

Act No. 93-634 does not require all terms of councilmembers in Huntsville to run concurrently with that of the mayor unless and until an ordinance is adopted pursuant to that act. "Prior to the regular general municipal election" as used in Act 93-634 means the regular municipal elections

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provided for in Code of Alabama 1975, § 11-46-21 which will next be held in 1996. If an ordinance is adopted pursuant to Act No. 93-634, terms of office for candidates elected in 1994 will be for a period of two years and would conclude with the ending of the mayor's term in 1996.

We note that under state law the legislature may shorten the term of an elected official (opinion to Kenneth W. Harpinger, Sr., under date of April 11, 1983, A.G. No. 83-00268), but questions regarding the effect of such an act under the federal court order and the Voting Rights Act should be submitted to the federal court and/or the Justice Department.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/CJS/dn  
J9.93/OP